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January 8, 2016

Honorable Charles R. Breyer  
United States District Judge  
United States District Court  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 3:15-MD-2672-CRB (JSC)

Dear Judge Breyer:

Pursuant to Pretrial Order No. 2, I respectfully submit for Your Honor's consideration my application for appointment to the Plaintiffs' Steering Committee ("PSC"). Given the number of extremely well-qualified attorneys requesting appointments, and the expedited track and anticipated direction of this litigation, I believe my skills are best utilized as a member of the PSC, although I am ready, willing and able to serve in any leadership capacity of the Court's choosing. If entrusted with a leadership appointment, I pledge to immediately devote my time and undivided attention, as well as our firm's resources, to represent the plaintiffs and putative class members who sustained damages as a result of Volkswagen's unlawful conduct.

**Professional Experience.** I possess the requisite experience for a leadership appointment in this high-profile multidistrict litigation. Over the past two decades, I have held leadership positions in federal and state court class actions. I have also tried complex cases before judges and juries, including trials of certified class actions.

For the past six years, I served as Plaintiffs' Coordinating Counsel in *In re Checking Account Overdraft Litigation*, MDL 2036, before Senior Judge James Lawrence King of the Southern District of Florida. As Plaintiffs' Coordinating Counsel, I was responsible for organizing and managing a team of over 100 lawyers from numerous law firms across the country in pursuing a series of class actions on behalf of millions of current and former bank customers against approximately 30 of the nation's largest banks. I chaired teams that developed and implemented strategies for prosecuting the class action litigation; served as the primary contact with defense counsel; acted as the plaintiffs' liaison with the Court regarding the management and administration of the litigation; and led or actively participated in settlement negotiations with 17 of the bank defendants. To date, our efforts in the *Overdraft MDL* have resulted in the recovery of over \$1.1 billion, including settlements with Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million). Since the *Overdraft MDL* is in its later stages, I now have ample time and resources to devote to this multidistrict litigation.

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I also have extensive experience trying certified class actions before judges and juries. Over the past decade, I served as lead counsel in a series of class actions brought on behalf of approximately 200,000 Florida homeowners to recover full compensation under the takings clause of the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. I argued before the Florida Supreme Court to pave the way for the homeowners to pursue their claims, and served as lead trial counsel in liability and compensation trials of four certified class actions that resulted in judgments awarding over \$76 million as compensation for the homeowners' property.

During 2015, I served as an Adjunct Professor at Vanderbilt University Law School, where I co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions (together with Professor Brian T. Fitzpatrick). Professor Fitzpatrick and I recently published an article entitled *An Empirical Look at Compensation in Consumer Class Actions*, 11 NYU Journal of Law & Business 767 (2015), following our presentation on *Consumer Class Actions: Data and Reform*, at the New York University Law School, Center on Civil Justice, Conference on Consumer Class Actions. I also lecture and make presentations on complex litigation and class actions, and have been invited as a guest lecturer at Harvard Law School and Vanderbilt Law School, and as a panelist at the Practicing Law Institute Annual Consumer Financial Services Institute, and the American Conference Institute's National Conference on Consumer Finance Class Actions and Litigation.

**Judicial References.** Senior Judge James Lawrence King of the Southern District of Florida has presided over the *Overdraft MDL* (305-523-5000); Judge Robin Rosenberg of the Southern District of Florida presided over one of the certified class actions discussed above that I tried to judgment (561-803-3431); and Broward County, Florida, Circuit Judge Ronald J. Rothschild (Ret.) presided over two of the certified class actions discussed above that I tried to judgment (954-961-7800). I can provide additional judicial references should Your Honor request them.

**Willingness and Ability to Immediately Commit to Time-Consuming Litigation.** My style is "hands-on" and "all-in." As a result, I am involved in fewer matters at any given time than many of my colleagues. I am willing and able to *immediately commit substantially all of my time* to this litigation and, if entrusted with a leadership position, will be personally involved from the date of my appointment until the matter is concluded.

**Willingness and Ability to Work Cooperatively with Other Counsel.** I consider my ability to work cooperatively with other counsel to be among my strongest attributes. I enjoy collaborating with fellow plaintiffs' counsel in the team approach. I also work hard to cultivate and maintain positive working relationships with defense counsel, and would be pleased to provide references from many of the defense counsel involved in the *Overdraft MDL* upon request.

**Access to Resources to Prosecute the Litigation.** I have considerable resources at my disposal to prosecute this litigation expeditiously. Our firm includes over 45 lawyers plus more than 25 support staff. I chair the firm's class action and complex litigation practice, and will be supported by as many of our attorneys and staff as are needed to properly staff this matter.

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**Willingness to Serve as Lead Counsel, a Member of the PSC, or Both.** I am applying for appointment to the PSC, but am ready, willing and capable of serving in any leadership capacity the Court deems appropriate.

**Particular Category Applicant Wants to Represent.** I prefer to represent vehicle owners and/or lessees, but am prepared to represent any or all categories of plaintiffs and putative class members.

**Other Considerations.** I have been committed to this litigation since its inception. Our firm filed complaints on behalf of putative classes of purchasers and lessees of Volkswagen and Audi diesel vehicles containing unlawful “defeat devices” within days following the first public reports of Volkswagen’s unlawful conduct.<sup>1</sup> Our complaints were among the first in the country to assert civil RICO claims, in addition to other statutory and common law claims. We were the first to suggest that the JPML transfer all related actions to the District of Columbia for coordinated and/or consolidated pretrial proceedings (JPML Dkt. No. 114). Pursuant to Pretrial Order No. 1, we submitted a recommendation of a Special Settlement Master (Dkt. No. 211). I personally attended the December 22 initial conference before Your Honor.

While Volkswagen has not (yet) admitted legal liability in these proceedings, it is hard to imagine that it will not do so given its public acknowledgements that it manufactured and distributed approximately 500,000 vehicles in the United States with unlawful “defeat devices.” It is also highly unlikely that Volkswagen will be able to credibly oppose class certification. Therefore, I believe the *immediate* task of the leadership team appointed by Your Honor will be to determine how to *maximize* the economic recovery to those affected by Volkswagen’s unlawful conduct, and to obtain approval of a comprehensive settlement that *expeditiously* provides such benefits to class members. Should Volkswagen be unwilling to promptly enter into an appropriate classwide settlement, the leadership team must be prepared to *fast-track* the litigation to trial in order to secure *full recovery* for class members. Based on my qualifications and past experiences, I am confident that I will make a substantial contribution to the leadership team if honored with an appointment.

An abbreviated personal and firm resume is appended as Attachment 1. A list of select plaintiffs’ counsel who filed actions transferred to MDL 2672 and who support my application for a leadership appointment is appended as Attachment 2.

I look forward to appearing before Your Honor on January 21, 2016, and to the opportunity to serve in a leadership role in this multidistrict litigation.

Respectfully submitted,

Robert C. Gilbert

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<sup>1</sup> *Mesa et al. v. Volkswagen A.G. et al.*, No. 15-cv-23606 (S.D. Fla., filed September 25, 2015); *Witcher, et al. v. Volkswagen AG, et al.*, No. 15-cv-1618 (D.D.C., filed October 2, 2015).